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Via Email

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September 28, 2011

Chairman Isenberg
Members of the Commission
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Delta Protection Commission Economic Sustainability Plan

Dear Chairman Isenberg and Members of the Council:

The subject of these comments is the Delta Stewardship Council (DSC)'s consideration of the Delta Protection Commission (DPC)'s Economic Sustainability Plan during the DSC's meeting, Friday, September 23, 2011. More generally, these comments relate to the relationship between the DPC's ESP and DSC's Delta Plan.

The DSC's September 23rd discussion of the DPC's Economic Sustainability Plan (ESP) tended to highlight a difficult and now familiar sticking point between the regional and local perspective on the Delta as represented by the Delta Protection Commission on one hand, and the current thrust of the Delta Plan, the Bay-Delta Conservation Plan (BDCP), and other statewide Delta initiatives on the other. The difficulty highlighted in this discussion is the reality that, while in-Delta interests have said they are not opposed to the co-equal goals or other aspects of state policy on the Delta in concept, these interests have also clearly manifested that they are not yet prepared to embrace a future for their region that is not only highly uncertain at this point, but also one that is vigorously opposed by many within the region.

Since these differences cannot easily be resolved at this time, it may be that the very expectation that they *can* or *should* be resolved at this time is premature. Instead, just as it is anticipated that the Delta Plan will be updated, added to, and reformulated over time - and just as the BDCP, the State Water Resources Control Board processes, and numerous other Delta-related processes will require additional time before anyone would expect any definitive outcomes from these processes - it is perhaps important to adopt a similar view that the DPC's

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ESP is a living document that will evolve and interact differently over time with other plans and processes including, especially, the DSC's Delta Plan.

Several provisions of the Sacramento-San Joaquin Delta Reform Act of 2009 (Sen. Bill No. 1 (2009 7th Ex. Sess.)) suggest that this was the intent of the Legislature: For example, whereas section 29702 declares the Legislature's intent to "[a]chieve the [co-equal goals] [...] in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place," Section 29703.5 finds that "the [DPC] is the appropriate agency to identify and provide recommendations to the [DSC] on methods of preserving the Delta as an evolving place as the [DSC] develops and implements the Delta Plan."

The DPC's current mandate is to "prepare and adopt [...] an economic sustainability plan [containing] information and recommendations [to] inform the [DSC's] policies regarding the socioeconomic sustainability of the Delta region."¹ Thereafter, the legislation provides that "[t]he commission shall, [...] as determined to be necessary, amend the economic sustainability plan every five years," and that the [DSC] "shall review the economic sustainability plan for consistency with the Delta Plan."²

Section 29778.5 authorizes any funds appropriated to a new Delta Investment Fund to be "available [...] to the [DPC] for the implementation of [its] regional economic sustainability plan."³ Furthermore, as an additional expression of the DPC's role as a state conduit for regional perspectives and interests in the Delta, section 29773 empowers the DPC to review and comment on significant projects in the Delta Plan that "may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones," including "identification of impacts to the cultural, recreation, and agricultural values of the Delta," "[r]ecommendations for actions that may avoid, reduce, or mitigate [such impacts]," and "[i]dentification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation."⁴ The DSC is to consider any recommendations of the DPC (both in comments and in the DPC's then current economic sustainability plan) and, "in its discretion," then adopt any recommendations it deems to be "feasible and consistent with the objectives of the Delta Plan and the purposes of [the Delta Reform Act of 2009]."⁵

While, as Councilmember Johnston indicated during the September 23rd meeting, some statewide policies and objectives will likely preclude wholesale adoption of the present ESP, it is

¹ Cal. Pub. Res. Code, § 29759, subd. (a).

² *Id.* at § 29761.5.

³ *Id.* at § 29778.5.

⁴ *Id.* at § 29773, subd. (a).

⁵ *Ibid.*

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also important to recognize that the ESP is a document which reflects a general consensus of interests in the Delta region at this time. In this regard, the DPC's ESP is, at the very least, an important record of a set of differences that California must *eventually* come to terms with - and yet a set of differences that remain, at this point, very much unsettled.

In terms of content from the DPC's ESP that the DSC will now consider for potential inclusion in the final Delta Plan, a useful initial purpose of the Delta Plan might be to take the DPC's ESP as a starting point for formal consideration of those areas in which regional perspectives in the Delta diverge from specific state policies and objectives for the Delta. To position the public debate for this next evolution in this dialogue, the DSC's Delta Plan should identify and summarize the DPC's specific findings and recommendations from the ESP that the DSC either does or does not adopt in the Delta Plan. Secondly, the DSC should clearly articulate the specific reasons it chooses to either include or exclude any portion, specific element, or recommendation of the DPC's ESP, including the reasons the DSC believes such elements of the DPC's ESP are either consistent or inconsistent with the statewide policies and objectives of the DSC's Delta Plan.⁶

To bridge the considerable temporal gap between this ESP and this Delta Plan and the next iteration of these documents, the DSC and State of California should commit to fostering genuine opportunities for robust local and regional input in the interim. Finally, so far as possible, the DSC should devise specific methods and processes to integrate and link this regional dialogue back to the broader statewide debate and, ultimately, to any statewide decisions on the Delta.

We are well aware that there are strong differences of opinion concerning the specific conclusions, assumptions, methods, as well as the general approach of the DPC's ESP. Despite this, it seems generally fair to say that the DPC has presented a regional perspective in the ESP, and that it has generally supported that perspective with a considerable body of data and analysis. Minds may differ as to the DPC's approach and conclusions. Such as it is, however, the ESP strikes us as generally sufficient to meet the purpose for which it was intended. Most importantly, as noted previously, the differences highlighted in the current ESP provide a potential starting point for statewide and regional dialogue going forward.

In summary, then, the core recommendations offered herein are as follows:

⁶ For this purpose, the DSC can likely focus on the final chapters of the DPC's ESP containing the DPC's main findings, policies, and recommendations.

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1. That the DSC's Delta Plan identify and describe specific findings or recommendations of the ESP that are excluded from the Delta Plan;
2. That the DSC make specific findings concerning the reasons it either adopts or does not adopt any portion or element of the ESP either included in or excluded from the Delta Plan;
3. That the DSC develop and pursue formal processes to provide for robust on-going consideration of regional perspectives on the Delta prior to the next round of statutorily required updates to the DPC's ESP and DSC's Delta Plan;
4. That these regional conversations be specifically linked back to the broader public debate and, ultimately, to any statewide decisions on the Delta.

Although these recommendations are related, the DSC may consider them either jointly or separately. Thank you for considering these suggestions as they relate to these important regional aspects of the DSC's Delta Plan.

Very truly yours,



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cc: Mike Machado
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